

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7745 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SABARKANTHA DISTRICT COTTON PRODUCERS COOP SPIN MILLS LTD

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR PRASHANT G DESAI for Respondent No. 1 & 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/02/99

ORAL JUDGEMENT

#. The learned counsel for the petitioner prays for deletion of name of respondents No.3 and 4 from this special civil application at this stage. The apprehension of the learned counsel for the petitioner is that in case the names of these persons are deleted without any reservation and in case the final order passed by the authority in the matter is challenged before this

Court it may not be taken as if the allegation of malafides made against these persons, are not pressed. So to overcome this apprehension, the learned counsel for the petitioner has prayed for deletion of names of these two persons from the arena of respondents in this special civil application at this stage.

#. I find merits in this apprehension of the learned counsel for the petitioner. The names of respondents No.3 and 4 are ordered to be deleted from the cause title of this special civil application. It is made clear that in case the final order goes against the petitioner and he challenges the same before this Court in that case it may not be taken that the petitioner has given up the allegations of malafides raised by it in this special civil application against respondents No.3 and 4, if they are impleaded parties in that writ petition.

#. Rule. Mr.Desai waives service of Rule on behalf of respondents No.1 and 2. The matter is taken up for final hearing on the request of learned counsel for the parties.

#. The learned counsel for the petitioner raised only contention that the impugned order, appointing provisional Liquidator of the Society has been passed by respondent No.2 without any notice or opportunity of hearing to the petitioner. It is next contended that though in Section 107 of the Gujarat Cooperative Societies Act, 1961, there is no provision to give any notice and opportunity of hearing to the Society by the authority, while passing the order of appointing Provisional Liquidator of the Society pending decision of passing of final order of winding-up of the Society, this Court in the case reported in 1993(2) GLH 861, has taken view that at the stage of passing of order appointing the Provisional Liquidator the authority has to give notice and opportunity of hearing to the Society.

#. The learned counsel for the respondents fairly conceded this legal position. In view of this concession made by learned counsel for the respondents, the order impugned in this special civil application cannot be allowed to stand. Accordingly, this special civil application succeeds and the order dated 10th September 1998 of the respondent No.2 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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[sunil]